

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**DECLARATION OF BIK CHEEMA IN SUPPORT OF TRUSTEE'S MOTION FOR AN
ORDER UPHOLDING TRUSTEE'S DETERMINATION DENYING "CUSTOMER"
CLAIMS FOR AMOUNTS LISTED ON LAST CUSTOMER STATEMENT,
AFFIRMING TRUSTEE'S DETERMINATION OF NET EQUITY, AND EXPUNGING
THOSE OBJECTIONS WITH RESPECT TO THE DETERMINATIONS RELATING
TO NET EQUITY**

I, Bik Cheema, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an associate with Baker & Hostetler LLP ("BH"). I am member of the New York Bar Association and the Southern District of New York, and am in good standing.

2. Baker & Hostetler LLP is counsel to Irving H. Picard, the Trustee appointed by the United States District Court for the Southern District of New York for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS"), under the Securities Investor Protection Act ("SIPA"), and for Bernard L. Madoff ("Madoff").

3. On or about June 22, 2008, I began reviewing objections to determinations of customer claims in this SIPA liquidation.

4. I make this declaration based upon the information and knowledge acquired during the course of Baker & Hostetler LLP's engagement as counsel to the Trustee, as described herein.

Claims, Determinations and Objections

5. During the course of my engagement in this matter, I have personally reviewed thousands of documents, including claims filed by customers, determination letters issued by the Trustee in response to these claims, and objections filed by customers in response to the Trustee's determination of their claims.

6. As part of my review, I reviewed all objections received by the Trustee in response to his determination of all timely filed claims. Most of the objections I reviewed had more than one basis for objection, but for purposes of this motion, I have isolated the net equity¹ objections which were then categorized as follows:

"Net Winners" - Under the parlance of this proceeding, a "net winner" is defined as a BLMIS customer that withdrew more funds from BLMIS than the customer deposited with BLMIS. Thus, the customer received payments constituting a full return of her principal investment, plus some amount of fictitious "profits" generated by BLMIS. Although she has already withdrawn all of her principal, along with some amount of fictitious profits (in reality, funds deposited by other customers), the "net winner" customer who objects to the Trustee's

¹ The statutory framework for the satisfaction of customer claims in a SIPA liquidation proceeding provides that customers share pro rata in customer property to the extent of their "Net Equity," as defined in section 78III(11) of SIPA, and to the extent that a customer's Net Equity exceeds his or her ratable share of customer property, SIPA shall advance funds to the SIPA trustee up to \$500,000 for securities for that customer. The Trustee has determined each customer's Net Equity by crediting the amount of cash deposited by the customer into her BLMIS account, less any amounts withdrawn from her BLMIS customer account, otherwise known as the "cash in/cash out approach." Certain claimants disagree with the Trustee as to the construction of the term Net Equity and how that term should be applied to determine the amount of the valid customer claim of each claimant. Various claimants have asserted that Net Equity should be determined on the basis of each claimant's balance as shown on their November 30, 2008 account statement provided by BLMIS.

methodology is claiming that she is due the fictitious amount fabricated on her final fake November 30, 2008 BLMIS customer statement.

“Net Losers” (over-the-limit) - Under the “cash in/cash out” approach, the customers that fall within the category of “over-the-limits net losers that have received full SIPC protection” are customers that withdrew less money from BLMIS than they deposited over time, and had net investment amounts in excess of \$500,000. They are entitled to an allowed claim for the amount that they invested, less the amount that they have withdrawn from BLMIS. The difference between the amount invested and the withdrawn amount over time is the customer’s Net Equity. The customer has received or will receive a *pro rata* share of any customer property based upon her Net Equity, and will receive a check from the Trustee of \$500,000 from funds advanced by SIPC against her share of customer property. Although the claims of these investors should be based on their Net Equity as measured by the net amount invested, these claimants assert that the amount of their Net Equity should be equal to the fictitious amounts represented on their final fake November 30, 2008 BLMIS customer statement. Some of these claimants also argue that their claim for this last reported fictitious amount should be satisfied in securities and not cash.

“Net Losers” (under-the-limit) - Like the previous category, customers that fall within this category also have allowable claims because they invested more over time than they withdrew from the fraudulent scheme. The net investment amount is less than \$500,000, so their respective SIPC protection is limited to the amount of their respective net investment. They will not be entitled to a further distribution from the fund of customer property because their Net Equity claim will have been fully satisfied by the SIPC advance, and SIPC will receive the

customers' share of customer property as subrogee. These customers' respective final fake November 30, 2008 BLMIS customer statements may, however, show a balance higher than \$500,000.

In connection with the investigation, I drafted a document entitled "Description of Net Equity Claimants," which serves as Exhibit A ("Exhibit A") to the Trustee's Motion for an order upholding the Trustee's determination denying customer claims for amounts listed on last statement, affirming Trustee's determination of net equity, and expunging those objections with respect to the determinations relating to net equity.

Basis of Personal Knowledge

7. Specifically, in order to populate Exhibit A, I reviewed claims filed by claimants who objected on the basis of the Trustee's determination of net equity, reviewed the respective determination letters issued by the Trustee, and reviewed the respective objections by claimants.

8. In order to perform my review, I accessed and reviewed documents using PACER in addition to files filed by customers with the Trustee pursuant to this Court's Claims Procedures Order, determination letters issued by the Trustee, and objections to those determinations by claimants, filed with the Court.

9. The purpose of the review was to ascertain the number and details of each objecting claimant on the basis of the Trustee's determination of net equity.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
October 16, 2009

BAKER & HOSTETLER LLP

By: /s/ Bik Cheema
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, NY 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
Bik Cheema
Email: bcheema@bakerlaw.com

*Attorneys for Irving H. Picard, Esq.,
Trustee for the Substantively Consolidated
SIPA Liquidation of Bernard L. Madoff
Investment Securities LLC and Bernard L.
Madoff*